

II. Remarks

Claims 1-41 are pending in this case. Of these, claims 1-41 stand rejected under 35 U.S.C. Section 112, second paragraph; and claims 1-41 stand rejected under 35 U.S.C. Section 103(a) in view of U.S. Pat. No. 5,643,989 (“the ‘989 patent”).

Turning first to the rejections under Section 112, the examiner asserts that claims 1-41 are rendered indefinite both by improper Markush group language, and further by recitation of a melt flow index with no supporting particularization of applicable temperature or pressure conditions. Respecting the former rejection, Applicant has amended independent claims 1, 20 and 33 to substitute acceptable Markush group language for the previous term “including.” Respecting the latter rejection, Applicant proposes to insert language specifying the ASTM procedure according to which the melt flow index of the recited thermoplastic materials is *defined* (Applicant notes that this limitation is definitional only, and does not comprise a process step). By these amendments, Applicant submits that the above rejections have been traversed.

Turning to the rejections under Section 103, it is the examiner’s position that the ‘989 patent “discloses melt kneading a mixture of functionalized polypropylene and glass fibers sized with sizing falling within the scope of the instantly claimed size and stamping the resulting laminate into the desired product, which falls within the scope of the instantly claimed molding step.” Official Action, p. 3. Moreover, the examiner asserts that the claimed melt flow index is inherently possessed by the ‘989 patent “under some combination of temperature and pressure.” *Id.* What the ‘989 patent apparently lacks, from the examiner’s point of view, is “the combination of ingredients of the instant claims and the molding process of the instant claims.” *Id.* These deficiencies, the examiner argues, would have been “obvious to one of ordinary skill in

the art...because they are encompassed by the patentee and would have been expected to give the improved properties disclosed by the patentee.” *Id.* As to the invention of claim 36, the examiner asserts that “[i]t would have been obvious to...make the instantly claimed battery trays using the above discussed method because the improved properties that result in a product of sufficient properties to make a bumper would have been expected to make a superior battery tray....” *Id.* For the reasons specified below, Applicant respectfully disagrees.

A *prima facie* case of obviousness requires that “all the claim limitations be taught or suggested by the prior art,” and, moreover, that there exist “some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” MPEP §§ 2143, 2143.03; *see also In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1998); and *In re Jones*, 21 USPQ2d 1941 (Fed. Cir. 1992).

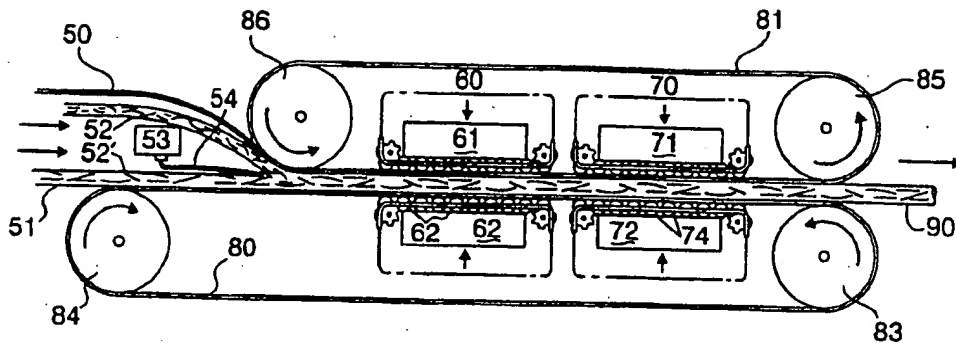
As to the inventive process of claims 1-35, the ‘939 patent fails, by the examiner’s own admission (implicit in the Section 103 rejection), to teach all of the claim limitations. Yet, as to the prior art’s deficiencies, the examiner identifies no other prior art teaching satisfying these shortcomings, nor any prior reference or knowledge generally available which either suggests or motivates modification to the disclosure of the ‘989 patent. What the examiner has done in this case is to argue that while the ‘989 patent admittedly fails to teach Applicant’s “combination of ingredients” and “molding process” (by which terms the examiner apparently means to refer to, *inter alia*, the particular materials employed, their relative weight percentages, process temperature ranges, etc.), such deficiencies in the prior art would have been obvious to one of ordinary skill in the art notwithstanding the acknowledged absence of the same in the cited

reference. This is nothing more than an assertion that the Applicant's "combination of ingredients" and "molding process" (to use the examiner's terminology) would have been "obvious to try". Such a contention is simply untenable. *See* MPEP § 2145(x).

Notwithstanding the foregoing, it is equally the case that the '989 patent does not encompass that teaching attributed to it by the examiner. On the contrary, what the '989 in fact discloses is a composite laminate of random glass mats and polypropylene. *See* Abstract. More specifically, this laminate consists of continuous strand needled mats of glass fibers sandwiched between thermoplastic resin sheets. The following excerpt from the specification of the '989 patent, describing the process of making the laminate thereof in conjunction with FIG. 3 (reproduced below), is particularly instructive:

"In **FIG. 3**, an illustration of equipment is shown suitable for laminating the continuous mat products produced in accordance with the instant invention with thermoplastic resin sheets...Thus, as shown...two thermoplastic resin sheets **50** and **51** are fed to a first laminating zone generally indicated **60**. Fed in between the two resin sheets **51** and **50** are two needled mats prepared in accordance with this invention and identified by the numerals **52** and **52'**. Intermediate the mats **52** and **52'** fed from extruder **53** is a molten thermoplastic resin **54** of composition typically identical to the composition of the thermoplastic resin sheets **50** and **51**. The resin sheets **50** and **51** and the mats **52**, **52'** and the molten resin **54** are passed into the hot laminating zone **60**...The product emanating from the hot zone **60** is passed into a cold zone **70**...." Col. 10, lines 41-65.

Fig3



The foregoing teaching is unquestionably incomparable to the process of the instant invention, according to which a composition comprising a thermoplastic material in its solid state and reinforcing fibers are knead melted, with the reinforcing fibers being filamentized in an essentially homogenous dispersion throughout the solid polymeric material.

With respect to the molded article of claim 36 more particularly, the '989 patent is similarly incomparable to the instant invention, which invention comprises such an article composed of an injection moldable polymeric material comprising a melt processible thermoplastic material and reinforcement fibers present in an essentially uniformly dispersed manner....” As previously indicated, the '989 patent contrarily discloses a composite in the nature of a laminate of *separate* glass fiber mat and polypropylene layers.

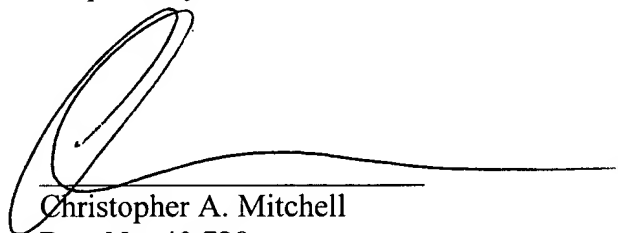
The base claims being patentable over the cited art, Applicant respectfully submits that the examiner's rejection of the remaining claims is rendered moot. This fact notwithstanding, Applicant notes that the art of record, taken alone or in any permissible

combination, fails to either anticipate or render obvious the invention of claims 2-19, 21-32, 34-35, or 37-41. Should the examiner maintain the rejections to the claims, Applicant reserves the right to place the claims in allowable form.

III. Conclusion

In view of the foregoing, Applicant submits that the claims are in condition for immediate allowance. Of course, the examiner is invited to contact Applicant's undersigned counsel at (734) 662-0270 if he should have any questions respecting this paper, or if a telephonic interview might otherwise expedite the prosecution of this case.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right.

Christopher A. Mitchell
Reg. No. 40,729
YOUNG & BASILE, P.C.
2001 Commonwealth Blvd.
Suite 301
Ann Arbor, Michigan 48105

Dated: January 5, 2004